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Filing date: **09/26/2014**

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Proceeding	92058047
Party	Plaintiff 2156775 Ontario Inc.
Correspondence Address	RONALD E SHAPIRO SHAPIRO AND SILVERSTEIN PLLC 11350 RANDOM HILLS ROAD, SUITE 740 FAIRFAX, VA 22030 UNITED STATES rshapiro@sasiplaw.com
Submission	Plaintiff's Notice of Reliance
Filer's Name	Ronald E. Shapiro
Filer's e-mail	rshapiro@sasiplaw.com
Signature	/Ronald E. Shapiro/
Date	09/26/2014
Attachments	Petitioner's Notice of Reliance_Part1.pdf(4691839 bytes) Petitioner's Notice of Reliance_Part2.pdf(4344946 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

2156775 ONTARIO INC.,

Petitioner,

v.

GI GROUP, INC.,

Respondent.

Cancellation No. 92058047

Registration No. 3,624,412

Mark: STARZ

PETITIONER'S NOTICE OF RELIANCE

Pursuant to 37 C.F.R. § 2.120(j)(5) and attached hereto as Exhibit A, Petitioner relies upon and hereby makes of record and introduces into evidence Respondent's responses to Petitioner's First Set of Interrogatories to Respondent, First Set of Requests for Production of Documents and Things to Respondent, and First Set of Requests for Admission to Respondent (with copies of the corresponding interrogatories, requests for production, and requests for admission). Petitioner will rely on these documents to show: (i) that Respondent had not used the mark of Registration No. 3,624,412 in commerce, within the meaning of the Lanham Act, as claimed in the statement of use filed by Respondent in application Serial No. 77475910; (ii) that when filed the statement of use in application Serial No. 77475910, Respondent had not used the mark of Registration No. 3,624,412 in commerce, within the meaning of the Lanham Act, as claimed in the statement of use; and (iii) that Registration No. 3,624,412 was obtained by fraud.

Respectfully submitted,

Date: September 26, 2014



Ronald E. Shapiro
Shapiro and Silverstein PLLC
11350 Random Hills Road, Suite 740
Fairfax, Virginia 22030
Tel: 703-273-7680
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was mailed to Respondent's attorney of record on September 26, 2014, by first class mail, postage prepaid, at the following address:

John A. James, Esq.
Law Offices of John A. James
439 S Buena Vista Street
Redlands, CA 92373



Ronald E. Shapiro

Exhibit A to Petitioner's Notice of Reliance

Cancellation No. 92058047

2156775 Ontario Inc. v. GI Group, Inc.

JOHN A. JAMES ESQ. (CBN # 200569)
LAW OFFICE OF JOHN A. JAMES, ESQ.
439 S. BUENA VISTA ST.
REDLANDS, CA 92373
TELEPHONE: (619) 858-1616
FACSIMILE: (909) 792-0121

Attorney for Respondent, GI Group, Inc.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

2156775 ONTARIO, INC., a Canadian Corporation)
)

Petitioner,

VS.

GI Group, Inc., a California Corporation

Respondent.

Cancellation No. 92058047

Registration No. 3,624,412

Mark: STARZ

RESPONSE TO PETITIONER'S FIRST SET OF INTERROGATORIES

PROPOUNDING PARTY: 2156775 Ontario, Inc.

RESPONDING PARTY: GI Group, Inc.

PRELIMINARY STATEMENT

These responses are made solely for the purpose of and in relation to this action. Each response is given subject to all appropriate objections (including, but not limited to, objections concerning competency, relevancy, materiality, propriety and admissibility) which would require the exclusion of any statement contained herein if the interrogatory were asked of, or any statement contained herein were made by, a witness present and testifying in court. All

1 such objections and grounds therefor are reserved and may be interposed at the time of trial. The
2 party on whose behalf the responses are given has not yet completed its investigation of the facts
3 relating to this action, has not yet completed its discovery in this action, and has not yet
4 completed its preparation for trial. Consequently, the following responses are given without
5 prejudice to the responding party's right relating to the proof of facts subsequently discovered to
6 be material.

7
8 Except for facts explicitly admitted herein, no admission of any nature whatsoever is to be
9 implied or inferred. The fact that any interrogatory herein has been responded to should not be
10 taken as an admission, or a concession of the existence, of any facts set forth or assumed by such
11 interrogatory, or that such response constitutes evidence of any fact thus set forth or assumed by
12 such interrogatory, or that such a response constitutes evidence of any fact thus set forth or
13 assumed. All responses must be construed as given on the basis of present recollection. Any
14 interrogatory deemed as continuing is objected to as oppressive, overburdensome, improper and
15 not in compliance with the California Code of Civil Procedure sections 2016, 2030 et seq., and
16 will not be regarded as continuing in nature.

17
18 1. Respondent must first state that as a licensed wholesaler they are prohibited from
19 selling to any natural person and all sales hereinafter are/were made to properly licensed entities.
20 No sales were made to any unlicensed person or entity. The above stated:

21 a) First sale was from High Falls Brewery (acting with respondent's authorization) to GI Group
22 on February 24, 2009 at Rochester, NY. First retail sale (to a licensed wholesaler) was
23 September 23, 2009 (Nevada), however, samples (not cash sales, however meeting your
24 definition of 'sales' at 'I') were sent to Kansas, Texas, Maryland, Washington, DC, and Maine on
25 or about May 9, 2008 through May 22, 2008 in good faith efforts to generate future interstate
26 sales. Marketing is commerce, by your definitions at 'I'. This was 10 months prior to
27 registration. The May 9, 2008 date is the appropriate first 'sale' according to your definitions at
28 'I'.

1 b) May 2008 (advertising and samples), February 24, 2009 (wholesale purchase in New York,
2 actual for cash transfer of ownership) September 23, 2009 (sales to distributors).
3 c) May 2008 (advertising and samples), February 24, 2009 (wholesale purchase in New York)
4 September 23, 2009 (marketing and sales to distributors).
5 d) GI Group does not sell displays, they are advertising and given to appropriate retailers and/or
6 distributors. Such (as being available as a part of a marketing campaign) were referenced in the
7 May 2008 sales efforts (noted above) to multiple states and the District of Columbia. The first
8 time a display was erected outside California was at the 72nd National Beer Wholesalers
9 Convention & Trade show in Las Vegas, Nevada which opened September 23, 2009.

10
11 2. The label was distributed to (among others) Standard Distributing Company, New
12 Castle of Delaware, Maletis Distributing of Dallas, Texas, Schroeder of Baltimore, Maryland,
13 Premium Distributors of Washington, DC, and central Distributors of Lewiston Maine., again
14 here actual labels distributed and promoted (on or about May 9 through 22, 2008), nothing sold
15 for cash, however, meets your definition of 'sales' at 'I' in your definitions. Samples were
16 provided. In February 24, 2009 High Falls Brewery, authorized by respondent, sold 42,999
17 pounds of product to GI Group. In September, 2009 sales were at the National Beer
18 Wholesaler's Convention, Las Vegas, Nevada.

19
20 3. The beer was shipped from New York to California via rail FOB, Rochester sale on
21 February 24, 2009, embarking March 2, 2009 at approximately 3:00 pm local time. It arrived in
22 California on March 24, 2009 at 8:14 AM. This included actual beer, cans with labels affixed
23 (actually printed on can), labeled packaging, but no sales displays. Sales displays are not sold
24 nor tracked like inventory and actual date(s) for displays are not currently available. Beer was
25 the property of GI Group when shipped in interstate commerce, March 2, 2009.

26
27 4. The beer went through several common carriers and was received by GI Group in
28 California on March 24, 2009.

1 5. While Ale labeling and packaging has been developed, such product has not been
2 made available to the general public to date.

3
4 6. N/A

5
6 7. N/A

7
8 8. N/A

9
10 9. Please see answers to 1 through 4 above. Starz beer is a lager.

11
12 10. Please see answers to 1 through 4 above. Starz beer is a lager.

13
14 11. Please see answers to 1 through 4 above. Starz beer is a lager.

15
16 12. Please see answers to 1 through 4 above. Starz beer is a lager.

17
18 13. The sales of stout are delayed due to production availability at this time.

19
20 14. N/A

21
22 15. N/A

23
24 16. N/A

25
26 17. The sales of porter are delayed due to production availability at this time.

27
28 18. N/A

1 19. N/A

3 20. N/A

5 21. The sales of shandy are delayed due to production availability at this time.

7 22. N/A

9 23. N/A

11 24. N/A

13 25. a) The Avocado Food Market 825 Avocado Avenue El Cajon CA 92020

14 b) George Istambouli, President, GI Group, Inc.

16 26. The first uses, back in May of 2008 some 10 months before the first sales or the
17 registration of the mark included both labels and samples sent to a minimum of four states and
18 the District of Columbia. This was done to promote all: the label, the brand, the beer and of
19 course, sales (otherwise commonly known as commerce). The brewing of the beer was in New
20 York state. There were numerous trips to and from New York and California (including lodging,
21 food, transportation and misc. expenses associated with such travel and negotiations, crossing
22 state lines) in negotiating and executing the purchase/production of the beer, the labels, and the
23 packaging. We purchased the beer and packaging, involving commerce, in New York state. The
24 labels and cans were purchased in inter-state commerce in New York, we understand some came
25 from a Canadian supplier. The produce with labeled cans, cases, and packaging was placed in
26 interstate commerce on a common carrier by GI Group in New York state. It was shipped in
27 interstate commerce to California. It was picked up and delivered by a common carrier. It was
28 immediately placed for sale. Within months sales spread to additional states and Mexico. It is

1 known to be common for individuals to purchase beer and to transport it across both state and
2 international boundaries. Here in San Diego (the first sale 2/27/2009) businesses are known to
3 be frequented by Mexican nationals who are known to cross the boarder into Mexico regularly
4 (both legally and illegally). Sometimes they carry beer they purchased in the San Diego area with
5 them. Boarder crossings to neighboring states are also known and common. It has also been
6 known for beer purchased earlier to then cross state lines. Quoting the supreme court in
7 WICKARD v. FILBURN (17 U.S. 111, 63 S.Ct. 82, 87 L.Ed. 122) 1944: "But even if the
8 appellee's activity be local and through it may not be regarded as commerce, it may still,
9 whatever it's nature, be reached by Congress if it exerts a substantial economic effect on
10 interstate commerce and this irrespective of whether such effect is what might at some earlier
11 time have been defined as "direct" or "indirect"". Our use was certainty commerce, our
12 sales/advertising efforts to multiple states are surely commerce. Many 'sales' (by your
13 definition) were clearly prior to our registration date. Our sales efforts both predate our
14 registration date and involve multiple states and the District of Columbia. Sales were made that
15 "either serves or offers to serve interstate travelers or serves food a substantial portion of which
16 has moved in interstate commerce." KATZENBACH v. McCLUNG (397 US 294). Our acts
17 were clearly in interstate commerce from before registration of the mark and continuing onward,
18 both interstate and internationally.

19
20 27. As we are the responding party, what we introduce will be based on what the
21 petitioner produces. This list is not inclusive. Not all documents may be introduced. More may
22 be required. This stated:

- 23 a) letter to distributors introducing STARZ beer dated May 9, 2008
- 24 b) Shipping document related to the May 9 letter where packages were sent to various states and
25 the District of Columbia
- 26 c) Shipping documents sending advertising and sales material to Israel
- 27 d) sales invoices, including first sales and international sales
- 28 e) labels for cans, bottles of various sizes and types of product

1 f) purchase documents for brewing, bottling, and packaging including labels

2 g) shipping and delivery documents

3 h) documents related to trade show appearances

4 i) other documents that may be deemed necessary or advisable at the time.

5
6 28. See above

7
8 29. George Istambouli, all, Mirus Group, Labeling, Ball Corporation, Packaging, High
9 Falls Brewing Co., brewing and packaging, CORC RAN, tradeshow, Rail Delivery Service, rail
10 shipping, CSX trucking, truck shipping.

11
12 30. George Istambouli, President, John A. James, Attorney

13
14
15 Dated: 07/29/14

by:  _____

16 George Istambouli, President

17 GI Group, Inc.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

2156775 ONTARIO INC.,

Petitioner,

v.

GI GROUP, INC.,

Respondent.

Cancellation No. 92058047

Registration No. 3,624,412

Mark: STARZ

PETITIONER’S FIRST SET OF INTERROGATORIES TO RESPONDENT

Petitioner submits the following interrogatories to Respondent under Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice. Each interrogatory is to be answered separately, fully, in writing, and under oath within 30 days after service upon Respondent.

DEFINITIONS AND INSTRUCTIONS

I. Unless otherwise clearly indicated by the context, the following definitions are applicable to the terms used herein:

A. “Respondent” or “you” means GI Group, Inc., its employees, agents, attorneys, representatives, licensees, and any predecessors, subsidiaries, parent entities, affiliates, and persons in privity with any of them in connection with the subject matter of this proceeding.

B. “Petitioner” means, 2156775 Ontario Inc., its employees, agents, attorneys, representatives, licensees, and any predecessors, subsidiaries, parent entities, affiliates, and persons in privity with any of them in connection with the subject matter of this proceeding.

C. “Person” means any natural person, corporation, association, firm, partnership, proprietorship, or business or legal entity.

D. “Document” means any written, recorded, or graphic matter of any kind whatsoever, however produced or reproduced, whether transcribed by hand or by mechanical, electronic, magnetic, photographic, or other means. The term “document” includes, but is not limited to, advertisements, agreements, assignments, bills of lading, books, brochures, bulletins, catalogs, CD-ROMs, charts, circulars, contracts, correspondence, discs, displays, drafts, drawings, e-mail communications, films, instructions, intra-company communications, invoices, labels, letters, licenses, memoranda, minutes, notebooks, notes, packaging, photographs, prints, purchase orders, records of discussions or oral communications, reports, sales slips, sketches, statements, studies, surveys, telegrams, tracings, work assignments, and worksheets. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy of a document is also to be considered a separate document.

E. “Communication” means any transmission of information.

F. “Identify”:

1. When used in reference to a natural person, the term “identify” means to state his or her full name, present or last known address, and present or last known business affiliation;

2. When used in reference to a corporation or other entity, the term “identify” means to state the full name and address of the entity, to describe its form (i.e., corporation, partnership, etc.), to state when it was formed, to specify the state, province, or country under whose laws it is organized, and to identify its subsidiary or affiliated entities;

3. When used in reference to a document, the term “identify” means to state its nature, title (if any), author, sender, recipient, date of preparation, present location, and custodian. When this information is readily discernible from a document, a copy of that document may be furnished in lieu of identification;

4. When used in reference to a communication other than a document, the term “identify” means to state the date, nature, and subject matter of the communication, whether it was recorded, and the identities of the transmitter, the recipient, and any witnesses; and

5. When used in reference to an intangible thing or a tangible thing other than a document, the term “identify” means to provide a complete description, including its common designation, its distinguishing characteristics, and any trademarks associated with it.

G. “Respondent’s Registration” means U.S. Trademark Registration No. 3,624,412.

H. “Respondent’s Mark” means the mark STARZ.

I. The terms “sale,” “sell,” and “sold” refer to the transfer or distribution of goods or the rendering of services by any means, whether or not a charge is made or a payment is received.

J. The singular form of any word includes the plural and vice versa.

K. The masculine form of any word includes the feminine and vice versa.

L. The conjunctive “and” includes the disjunctive “or” and vice versa.

II. The following interrogatories require responses that are accurate and complete as of the date on which they are made and are to be treated as continuing. Any additional information discovered by Respondent after service of its answers should be furnished to Petitioner by supplemental answers promptly after its discovery.

III. If a privilege is claimed with respect to any information, document, or thing, or if an interrogatory is not answered in full for reasons other than a claim of privilege, state fully the grounds for the claim of privilege or for the failure to answer the interrogatory in full, answer the interrogatory to the extent to which it is not objected, and identify all information, documents, and things with respect to which a privilege is claimed.

INTERROGATORIES

1. State the earliest date on which Respondent or a person acting with Respondent’s authorization sold beer to a person outside the State of California with Respondent’s Mark on any of the following:

- (a) a bottle, can, or other container for the beer;
- (b) a label affixed to a bottle, can, or other container for the beer;
- (c) a package associated with a bottle, can, or other container for the beer;
- (d) a display associated with a bottle, can, or other container for the beer.

2. Identify the person to whom the beer referred to in Interrogatory 1 was sold.

3. State the earliest date on which Respondent or a person acting with Respondent's authorization shipped or otherwise transported beer to a person outside the State of California with Respondent's Mark on any of the following:

- (a) a bottle, can, or other container for the beer;
- (b) a label affixed to a bottle, can, or other container for the beer;
- (c) a package associated with a bottle, can, or other container for the beer;
- (d) a display associated with a bottle, can, or other container for the beer.

4. Identify the person to whom the beer referred to in Interrogatory 3 was shipped or otherwise transported.

5. State the earliest date on which Respondent or a person acting with Respondent's authorization sold ale to a person outside the State of California with Respondent's Mark on any of the following:

- (a) a bottle, can, or other container for the ale;
- (b) a label affixed to a bottle, can, or other container for the ale;
- (c) a package associated with a bottle, can, or other container for the ale;
- (d) a display associated with a bottle, can, or other container for the ale.

6. Identify the person to whom the ale referred to in Interrogatory 5 was sold.

7. State the earliest date on which Respondent or a person acting with Respondent's authorization shipped or otherwise transported ale to a person outside the State of California with Respondent's Mark on any of the following:

- (a) a bottle, can, or other container for the ale;

- (b) a label affixed to a bottle, can, or other container for the ale;
- (c) a package associated with a bottle, can, or other container for the ale;
- (d) a display associated with a bottle, can, or other container for the ale.

8 Identify the person to whom the ale referred to in Interrogatory 7 was shipped or otherwise transported.

9. State the earliest date on which Respondent or a person acting with Respondent's authorization sold lager to a person outside the State of California with Respondent's Mark on any of the following:

- (a) a bottle, can, or other container for the lager;
- (b) a label affixed to a bottle, can, or other container for the lager;
- (c) a package associated with a bottle, can, or other container for the lager;
- (d) a display associated with a bottle, can, or other container for the lager.

10. Identify the person to whom the lager referred to in Interrogatory 9 was sold.

11. State the earliest date on which Respondent or a person acting with Respondent's authorization shipped or otherwise transported lager to a person outside the State of California with Respondent's Mark on any of the following:

- (a) a bottle, can, or other container for the lager;
- (b) a label affixed to a bottle, can, or other container for the lager;
- (c) a package associated with a bottle, can, or other container for the lager;
- (d) a display associated with a bottle, can, or other container for the lager.

12. Identify the person to whom the lager referred to in Interrogatory 11 was shipped or otherwise transported.

13. State the earliest date on which Respondent or a person acting with Respondent's authorization sold stout to a person outside the State of California with Respondent's Mark on any of the following:

- (a) a bottle, can, or other container for the stout;
- (b) a label affixed to a bottle, can, or other container for the stout;
- (c) a package associated with a bottle, can, or other container for the stout;
- (d) a display associated with a bottle, can, or other container for the stout.

14. Identify the person to whom the stout referred to in Interrogatory 13 was sold.

15. State the earliest date on which Respondent or a person acting with Respondent's authorization shipped or otherwise transported stout to a person outside the State of California with Respondent's Mark on any of the following:

- (a) a bottle, can, or other container for the stout;
- (b) a label affixed to a bottle, can, or other container for the stout;
- (c) a package associated with a bottle, can, or other container for the stout;
- (d) a display associated with a bottle, can, or other container for the stout.

16. Identify the person to whom the stout referred to in Interrogatory 15 was shipped or otherwise transported.

17. State the earliest date on which Respondent or a person acting with Respondent's authorization sold porter to a person outside the State of California with Respondent's Mark on any of the following:

- (a) a bottle, can, or other container for the porter;
- (b) a label affixed to a bottle, can, or other container for the porter;
- (c) a package associated with a bottle, can, or other container for the porter;
- (d) a display associated with a bottle, can, or other container for the porter.

18. Identify the person to whom the porter referred to in Interrogatory 17 was sold.

19. State the earliest date on which Respondent or a person acting with Respondent's authorization shipped or otherwise transported porter to a person outside the State of California with Respondent's Mark on any of the following:

- (a) a bottle, can, or other container for the porter;
- (b) a label affixed to a bottle, can, or other container for the porter;
- (c) a package associated with a bottle, can, or other container for the porter;
- (d) a display associated with a bottle, can, or other container for the porter.

20. Identify the person to whom the porter referred to in Interrogatory 19 was shipped or otherwise transported.

21. State the earliest date on which Respondent or a person acting with Respondent's authorization sold shandy to a person outside the State of California with Respondent's Mark on any of the following:

- (a) a bottle, can, or other container for the shandy;

- (b) a label affixed to a bottle, can, or other container for the shandy;
- (c) a package associated with a bottle, can, or other container for the shandy;
- (d) a display associated with a bottle, can, or other container for the shandy.

22. Identify the person to whom the shandy referred to in Interrogatory 21 was sold.

23. State the earliest date on which Respondent or a person acting with Respondent's authorization shipped or otherwise transported shandy to a person outside the State of California with Respondent's Mark on any of the following:

- (a) a bottle, can, or other container for the shandy;
- (b) a label affixed to a bottle, can, or other container for the shandy;
- (c) a package associated with a bottle, can, or other container for the shandy;
- (d) a display associated with a bottle, can, or other container for the shandy.

24. Identify the person to whom the shandy referred to in Interrogatory 23 was shipped or otherwise transported.

25. With respect to the photograph submitted as a specimen of use in U.S. Trademark Application Serial No. 77475910:

(a) state the name and address of the business where the photograph was taken; and

(b) identify the photographer.

26. If the first use of Respondent's Mark which you contend to be a use in commerce did not involve a sale of goods to a person outside the State of California or a

shipment or other transportation of goods to a person outside the State of California, state the facts that support your contention that the use in question was a use in commerce.

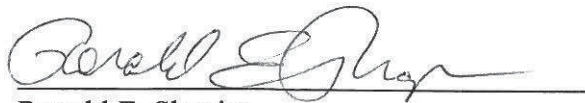
27. Identify all documents and things that you plan to introduce into evidence during Respondent's testimony period in this proceeding.

28. To the extent not already done, identify all documents and things that relate to any fact or matter stated in response to any of these interrogatories and, with respect to each document or thing, specify the interrogatory or interrogatories to which it relates.

29. Identify each person who has personal knowledge of the facts stated in response to each of these interrogatories, and indicate, with respect to each person, the subject matter about which he or she has personal knowledge.

30. Identify each person who participated in the preparation of the answers to these interrogatories, and indicate, with respect to each person, the answer or answers to which he or she contributed and the subject matter contributed.

Date: June 30, 2014



Ronald E. Shapiro
Shapiro and Silverstein PLLC
11350 Random Hills Road, Suite 740
Fairfax, Virginia 22030
Tel: 703-273-7680
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was mailed to Respondent's attorney of record on June 30, 2014, by first class mail, postage prepaid, at the following address:

John A. James, Esq.
Law Offices of John A. James
439 S Buena Vista Street
Redlands, CA 92373



Ronald E. Shapiro

JOHN A. JAMES ESQ. (CBN # 200569)
LAW OFFICE OF JOHN A. JAMES, ESQ.
439 S. BUENA VISTA ST.
REDLANDS, CA 92373
TELEPHONE: (619) 858-1616
FACSIMILE: (909) 792-0121

Attorney for Respondent, GI Group, Inc.

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

2156775 ONTARIO, INC., a Canadian Corporation

Cancellation No. 92058047

Petitioner,

Registration No. 3,624,412

VS.

Mark: STARZ

GI Group, Inc., a California Corporation

Respondent.

**RESPONSE TO PETITIONER'S FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS AND THINGS TO RESPONDENT**

PROPOUNDING PARTY: 2156775 Ontario, Inc.

RESPONDING PARTY: GI Group, Inc.

PRELIMINARY STATEMENT

These responses are made solely for the purpose of and in relation to this action. Each response is given subject to all appropriate objections (including, but not limited to, objections concerning competency, relevancy, materiality, propriety and admissibility) which would require the exclusion of any statement contained herein if the interrogatory were asked of, or

any statement contained herein were made by, a witness present and testifying in court. All such objections and grounds therefor are reserved and may be interposed at the time of trial. The party on whose behalf the responses are given has not yet completed its investigation of the facts relating to this action, has not yet completed its discovery in this action, and has not yet completed its preparation for trial. Consequently, the following responses are given without prejudice to the responding party's right relating to the proof of facts subsequently discovered to be material.

Except for facts explicitly admitted herein, no admission of any nature whatsoever is to be implied or inferred. The fact that any interrogatory herein has been responded to should not be taken as an admission, or a concession of the existence, of any facts set forth or assumed by such interrogatory, or that such response constitutes evidence of any fact thus set forth or assumed by such interrogatory, or that such a response constitutes evidence of any fact thus set forth or assumed. All responses must be construed as given on the basis of present recollection. Any interrogatory deemed as continuing is objected to as oppressive, overburdensome, improper and not in compliance with the California Code of Civil Procedure sections 2016, 2030 et seq., and will not be regarded as continuing in nature.

1. Sales outside California include High Falls Brewery (authorized as to Starz beer) sold to GI Group (Respondent) some 42,999 pounds of product (includes packaging) in Rochester New York on or about March 2, 2009. In addition, although sales efforts and not actual sales, the product was marketed in multiple states and the District of Colombia back ro May 9, 2008.

Documents attached:

- a) sales documents from High Falls Brewery
- b) shipping documents
- c) advertising letter
- d) shipping bills to distributors in Delaware, Texas, Maryland, Mane, and Washington DC.

1 2. Please see #1 above, beer shipped from New York. Sales efforts to multiple states.

2
3 3. The ale product has not been sold outside California.

4
5 4. N/A

6
7 5. Please see #1. Starz beer is a lager all sales in 1 are of lager.

8
9 6. Please see #1

10
11 7. The stout product has not been sold outside California

12
13 8. N/A

14
15 9. The porter product has not been sold outside California

16
17 10. N/A

18
19 11. The shandy product has not been sold outside California

20
21 12. N/A

22
23 13. Please find attached invoices, trade show invoices, label and packaging invoices and
24 related documentation.

25
26 Dated: 07/29/14

27 by: 

28 George Istambouli, President
GI Group, Inc.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

2156775 ONTARIO INC.,

Petitioner,

v.

GI GROUP, INC.,

Respondent.

Cancellation No. 92058047

Registration No. 3,624,412

Mark: STARZ

**PETITIONER'S FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS AND THINGS TO RESPONDENT**

Petitioner submits the following requests for production of documents and things to Respondent under Rule 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice. Petitioner requests Respondent to produce the documents and things specified in these requests for inspection and copying by Petitioner's attorneys at the offices of, Shapiro and Silverstein PLLC, 11350 Random Hills Road, Suite 740, Fairfax, Virginia 22030, within 30 days after service upon Respondent.

DEFINITIONS

The definitions contained in Petitioner's First Set of Interrogatories to Respondent are applicable to these requests.

INSTRUCTIONS

I. All documents and things produced in response to these requests shall be separated and identified by the request or requests to which they pertain.

II. If production of any document or thing is refused under an objection or a claim of privilege:

A. Identify the document or thing with respect to which the objection or claim of privilege pertains;

B. State fully the grounds for the objection or the claim of privilege; and

C. Identify each person who has knowledge relating to the content or nature of the document or thing and, with respect to each person identified, specify the subject matter to which his or her knowledge pertains.

REQUESTS FOR PRODUCTION

Petitioner requests Respondent to produce the following documents and things:

1. Documents sufficient to show that Respondent or a person acting with Respondent's authorization sold beer to a person outside the State of California on or before March 2, 2009, with Respondent's Mark on any of the following:

- (a) a bottle, can, or other container for the beer;
- (b) a label affixed to a bottle, can, or other container for the beer;
- (c) a package associated with a bottle, can, or other container for the beer;
- (d) a display associated with a bottle, can, or other container for the beer.

2. Documents sufficient to show that Respondent or a person acting with Respondent's authorization shipped or otherwise transported beer to a person outside the State of California on or before March 2, 2009, with Respondent's Mark on any of the following:

- (a) a bottle, can, or other container for the beer;
- (b) a label affixed to a bottle, can, or other container for the beer;
- (c) a package associated with a bottle, can, or other container for the beer;
- (d) a display associated with a bottle, can, or other container for the beer.

3. Documents sufficient to show that Respondent or a person acting with Respondent's authorization sold ale to a person outside the State of California on or before March 2, 2009, with Respondent's Mark on any of the following:

- (a) a bottle, can, or other container for the ale;
- (b) a label affixed to a bottle, can, or other container for the ale;
- (c) a package associated with a bottle, can, or other container for the ale;
- (d) a display associated with a bottle, can, or other container for the ale.

4. Documents sufficient to show that Respondent or a person acting with Respondent's authorization shipped or otherwise transported ale to a person outside the State of California on or before March 2, 2009, with Respondent's Mark on any of the following:

- (a) a bottle, can, or other container for the ale;
- (b) a label affixed to a bottle, can, or other container for the ale;
- (c) a package associated with a bottle, can, or other container for the ale;
- (d) a display associated with a bottle, can, or other container for the ale.

5. Documents sufficient to show that Respondent or a person acting with Respondent's authorization sold lager to a person outside the State of California on or before March 2, 2009, with Respondent's Mark on any of the following:

- (a) a bottle, can, or other container for the lager;
- (b) a label affixed to a bottle, can, or other container for the lager;
- (c) a package associated with a bottle, can, or other container for the lager;
- (d) a display associated with a bottle, can, or other container for the lager.

6. Documents sufficient to show that Respondent or a person acting with Respondent's authorization shipped or otherwise transported lager to a person outside the State of California on or before March 2, 2009, with Respondent's Mark on any of the following:

- (a) a bottle, can, or other container for the lager;
- (b) a label affixed to a bottle, can, or other container for the lager;
- (c) a package associated with a bottle, can, or other container for the lager;
- (d) a display associated with a bottle, can, or other container for the lager.

7. Documents sufficient to show that Respondent or a person acting with Respondent's authorization sold stout to a person outside the State of California on or before March 2, 2009, with Respondent's Mark on any of the following:

- (a) a bottle, can, or other container for the stout;
- (b) a label affixed to a bottle, can, or other container for the stout;
- (c) a package associated with a bottle, can, or other container for the stout;
- (d) a display associated with a bottle, can, or other container for the stout.

8. Documents sufficient to show that Respondent or a person acting with Respondent's authorization shipped or otherwise transported stout to a person outside the State of California on or before March 2, 2009, with Respondent's Mark on any of the following:

- (a) a bottle, can, or other container for the stout;
- (b) a label affixed to a bottle, can, or other container for the stout;
- (c) a package associated with a bottle, can, or other container for the stout;
- (d) a display associated with a bottle, can, or other container for the stout.

9. Documents sufficient to show that Respondent or a person acting with Respondent's authorization sold porter to a person outside the State of California on or before March 2, 2009, with Respondent's Mark on any of the following:

- (a) a bottle, can, or other container for the porter;
- (b) a label affixed to a bottle, can, or other container for the porter;
- (c) a package associated with a bottle, can, or other container for the porter;
- (d) a display associated with a bottle, can, or other container for the porter.

10. Documents sufficient to show that Respondent or a person acting with Respondent's authorization shipped or otherwise transported porter to a person outside the State of California on or before March 2, 2009, with Respondent's Mark on any of the following:

- (a) a bottle, can, or other container for the porter;
- (b) a label affixed to a bottle, can, or other container for the porter;
- (c) a package associated with a bottle, can, or other container for the porter;
- (d) a display associated with a bottle, can, or other container for the porter.

11. Documents sufficient to show that Respondent or a person acting with Respondent's authorization sold shandy to a person outside the State of California on or before March 2, 2009, with Respondent's Mark on any of the following:

- (a) a bottle, can, or other container for the shandy;
- (b) a label affixed to a bottle, can, or other container for the shandy;
- (c) a package associated with a bottle, can, or other container for the shandy;
- (d) a display associated with a bottle, can, or other container for the shandy.


12. Documents sufficient to show that Respondent or a person acting with Respondent's authorization shipped or otherwise transported shandy to a person outside the State of California on or before March 2, 2009, with Respondent's Mark on any of the following:

- (a) a bottle, can, or other container for the shandy;
- (b) a label affixed to a bottle, can, or other container for the shandy;
- (c) a package associated with a bottle, can, or other container for the shandy;
- (d) a display associated with a bottle, can, or other container for the shandy.

13. All documents and things identified by Respondent in response to Petitioner's First Set of Interrogatories to Respondent and not otherwise covered by these requests.

14. All documents and things, other than those produced in response to any of these requests, which Respondent intends to introduce into evidence or upon which Respondent otherwise intends to rely in connection with this proceeding.

Date: June 30, 2014

A handwritten signature in cursive script, appearing to read "Ronald E. Shapiro", written over a horizontal line.

Ronald E. Shapiro
Shapiro and Silverstein PLLC
11350 Random Hills Road, Suite 740
Fairfax, Virginia 22030
Tel: 703-273-7680
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was mailed to Respondent's attorney of record on June 30, 2014, by first class mail, postage prepaid, at the following address:

John A. James, Esq.
Law Offices of John A. James
439 S Buena Vista Street
Redlands, CA 92373


Ronald E. Shapiro

1 JOHN A. JAMES ESQ. (CBN # 200569)
2 LAW OFFICE OF JOHN A. JAMES, ESQ.
3 439 S. BUENA VISTA ST.
4 REDLANDS, CA 92373
5 TELEPHONE: (619) 858-1616
6 FACSIMILE: (909) 792-0121

7 Attorney for Respondent, GI Group, Inc.

8
9 IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
10 BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD
11

12 2156775 ONTARIO, INC., a Canadian)
13 Corporation)

14 Petitioner,)

15 vs.)

16 GI Group, Inc., a California Corporation)

17 Respondent.)
18

Cancellation No. 92058047

Registration No. 3,624,412

Mark: STARZ

19 RESPONSE TO PETITIONER'S FIRST SET OF REQUESTS FOR

20 ADMISSION TO RESPONDENT

21 **PROPOUNDING PARTY:** 2156775 Ontario, Inc.

22 **RESPONDING PARTY:** GI Group, Inc.

23 **PRELIMINARY STATEMENT**

24
25 These responses are made solely for the purpose of and in relation to this action. Each
26 response is given subject to all appropriate objections (including, but not limited to, objections
27 concerning competency, relevancy, materiality, propriety and admissibility) which would
28 require the exclusion of any statement contained herein if the interrogatory were asked of, or

1 any statement contained herein were made by, a witness present and testifying in court. All
2 such objections and grounds therefor are reserved and may be interposed at the time of trial. The
3 party on whose behalf the responses are given has not yet completed its investigation of the facts
4 relating to this action, has not yet completed its discovery in this action, and has not yet
5 completed its preparation for trial. Consequently, the following responses are given without
6 prejudice to the responding party's right relating to the proof of facts subsequently discovered to
7 be material.

8
9 Except for facts explicitly admitted herein, no admission of any nature whatsoever is to be
10 implied or inferred. The fact that any interrogatory herein has been responded to should not be
11 taken as an admission, or a concession of the existence, of any facts set forth or assumed by such
12 interrogatory, or that such response constitutes evidence of any fact thus set forth or assumed by
13 such interrogatory, or that such a response constitutes evidence of any fact thus set forth or
14 assumed. All responses must be construed as given on the basis of present recollection. Any
15 interrogatory deemed as continuing is objected to as oppressive, overburdensome, improper and
16 not in compliance with the California Code of Civil Procedure sections 2016, 2030 et seq., and
17 will not be regarded as continuing in nature.

18
19 1. No, this is a false statement

20
21 2. No, this is a false statement

22
23 3. Yes

24
25 4. Yes

26
27 5. No, this is a false statement

28

1 6. No, this is a false statement

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3 7. Yes

4
5 8. Yes


6
7 9. Yes

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9 10. Yes

10
11 11. Yes

12
13 12. Yes

14
15 Dated: 07/29/14

16 by:  _____

17 George Istambouli, President

18 GI Group, Inc.
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v.

GI GROUP, INC.,

Respondent.

Cancellation No. 92058047

Registration No. 3,624,412

Mark: STARZ

PETITIONER'S FIRST SET OF REQUESTS FOR ADMISSION TO RESPONDENT

Pursuant to Rule 36 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Petitioner requests that Respondent admit the truth of the matters set forth in the following Requests for Admission.

DEFINITIONS

The definitions contained in Petitioner's First Set of Interrogatories to Respondent are applicable to these requests.

REQUESTS FOR ADMISSION

1. Admit that that neither Respondent nor a person acting with Respondent's authorization sold beer to a person outside the State of California on or before March 2, 2009, with Respondent's Mark on any of the following:

- (a) a bottle, can, or other container for the beer;
- (b) a label affixed to a bottle, can, or other container for the beer;

- (c) a package associated with a bottle, can, or other container for the beer;
- (d) a display associated with a bottle, can, or other container for the beer.

2. Admit that that neither Respondent nor a person acting with Respondent's authorization shipped or otherwise transported beer to a person outside the State of California on or before March 2, 2009, with Respondent's Mark on any of the following:

- (a) a bottle, can, or other container for the beer;
- (b) a label affixed to a bottle, can, or other container for the beer;
- (c) a package associated with a bottle, can, or other container for the beer;
- (d) a display associated with a bottle, can, or other container for the beer.

3. Admit that that neither Respondent nor a person acting with Respondent's authorization sold ale to a person outside the State of California on or before March 2, 2009, with Respondent's Mark on any of the following:

- (a) a bottle, can, or other container for the ale;
- (b) a label affixed to a bottle, can, or other container for the ale;
- (c) a package associated with a bottle, can, or other container for the ale;
- (d) a display associated with a bottle, can, or other container for the ale.

4. Admit that that neither Respondent nor a person acting with Respondent's authorization shipped or otherwise transported ale to a person outside the State of California on or before March 2, 2009, with Respondent's Mark on any of the following:

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5. Admit that that neither Respondent nor a person acting with Respondent's authorization sold lager to a person outside the State of California on or before March 2, 2009, with Respondent's Mark on any of the following:

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7. Admit that that neither Respondent nor a person acting with Respondent's authorization sold stout to a person outside the State of California on or before March 2, 2009, with Respondent's Mark on any of the following:

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- (b) a label affixed to a bottle, can, or other container for the stout;

- (c) a package associated with a bottle, can, or other container for the stout;
- (d) a display associated with a bottle, can, or other container for the stout.

8. Admit that that neither Respondent nor a person acting with Respondent's authorization shipped or otherwise transported stout to a person outside the State of California on or before March 2, 2009, with Respondent's Mark on any of the following:

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- (c) a package associated with a bottle, can, or other container for the shandy;
- (d) a display associated with a bottle, can, or other container for the shandy.

Date: June 30, 2014



Ronald E. Shapiro
Shapiro and Silverstein PLLC
11350 Random Hills Road, Suite 740
Fairfax, Virginia 22030
Tel: 703-273-7680
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was mailed to Respondent's attorney of record on June 30, 2014, by first class mail, postage prepaid, at the following address:

John A. James, Esq.
Law Offices of John A. James
439 S Buena Vista Street
Redlands, CA 92373

A handwritten signature in black ink, appearing to read "Ronald E. Shapiro", written over a horizontal line.

Ronald E. Shapiro